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70th & Kingessing Removal AOC
July 26, 1991BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

70th Street Containers/Trailers
Site

A-Line Freight, Ltd.

RESPONDENT

Proceeding Under Sections 106(a)
and 122 of the Comprehensive
Environmental Response, Compens-
ation, and Liability Act of 1980,
as amended by the Superfund
Amendments and Reauthorization
Act of 1986, 42 U.S.C. §§9606(a)
and 9622

Docket No. III-91-64-DC

I hereby certify that the
within is a true and correct copy
of the original Consent Order
filed in this matter.Attorney for EPAADMINISTRATIVE ORDER BY CONSENT
FOR REMOVAL ACTION

The parties to this Administrative Order by Consent ("Consent Order" or "Order"), A-Line Freight, Ltd. ("A-Line" or "Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9606(a) and 9622, ("CERCLA"), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 1923 (1987), and further delegated to the Regional Administrators of EPA. This Consent Order pertains to two abandoned containers/trailers (hereinafter "the Trailers") located on property situated at 70th and Kingessing Avenue in Philadelphia, Philadelphia County, Pennsylvania (the "Property"). The following areas will hereinafter be referred to collectively as the "70th Street Trailers Site" or "the Site": the two Trailers, the area on the Property on which the Trailers are located, any area on the Property or elsewhere on which hazardous

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substances from the Trailers are located, and any area of the property or elsewhere which is to be used for the Response Actions (including but not limited to the response actions identified in Paragraph 8.3 below). The Site is further described in paragraphs 3.1 and 3.2 below.

1.2 The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

1.3 The actions taken pursuant to this Consent Order shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP"), and CERCLA.

1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter defined), and to properly dispose of the hazardous substances located there.

III. EPA'S FINDINGS OF FACT

3.1 The Property on which the Site is located is a rectangular lot which covers approximately 1/4 of a city block at 70th and Kingessing Avenues in Philadelphia, Pennsylvania, on which there are situated two abandoned Trailers which contain various drums and containers of materials, at least some of which are hazardous substances. The Property is surrounded by a security fence which is in various stages of disrepair. The area surrounding the Property is of a light industrial nature with heavily populated residential areas located within a 1/4-mile radius of the Property.

3.2 Respondent A-Line operated a freight hauling company at the Property until November, 1990, when it ceased freight handling operations.

3.3 Robert Tannenbaum is an individual who owns the stock of A-Line and was a former operator of the Property.

3.4 Either Interpool Containers, Inc., a corporation organized and existing under the laws of the State of Delaware, or U.S.

Lines, Inc., a corporation organized and existing under the laws of New Jersey ("U.S. Lines"), is the owner of one of the Trailers which is marked as "Interpool INBO 299866" and which contains containers and drums of materials, at least some of which are hazardous substances.

3.5 Yamashita-Shinohon Steamship Co., a Japanese Company acquired by Nippon Liner Systems, Inc. (North America), a corporation organized and existing under the laws of the State of Delaware, is the owner of one of the two Trailers which is marked as "SCXU 662176 USA 2200" which contain containers and/or drums of materials, at least some of which are hazardous substances.

3.6 Federation of Jewish Agencies, a non-profit organization organized and existing under the laws of New York ("Federation"), is the current owner of the Property, having obtained title as a charitable contribution from the Respondents.

3.7 The two Trailers are in fair condition in a corner of the Property on which security is inadequate and access is not restricted.

3.8 A person working in the area of the Site reported vapors emanating from the Trailers on the Property. EPA, an EPA contractor, the Hazardous Materials Unit of the Philadelphia Fire Department, and the Philadelphia Department of Licenses and Inspections conducted a joint assessment on or about March 22, 1991 at the Site.

3.9 During the March 22 assessment, the two Trailers were opened in an attempt to identify the source of the odors, and they were found to contain various unknown materials.

3.10 EPA found approximately 200 containers, ranging from five gallon size cans to 55-gallon drums, haphazardly stored inside the two Trailers during the March 22 assessment. Several fiber drums were split open and their contents were spilled on the trailer floors.

3.11 The contents of the two Trailers are believed by EPA to be solvents, resins and paint products. During the March 22 assessment EPA observed several containers to be leaking and recorded organic vapors in excess of 100 parts per million in one trailer.

3.12 EPA obtained four samples on or about March 29, 1991 from various containers within the Trailers and analyzed them for characteristics of hazardous waste under the Resource, Conservation, and Recovery Act ("RCRA") regulations. Two of the samples were ignitable according to 40 CFR § 261.3 pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921.

3.13 The substances found in the two samples determined to be ignitable at the Site are hazardous wastes having the characteristics identified by 40 C.F.R. 261.3 and thus are hazardous substances pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3.14 Only the Respondent has to date been willing to execute this Consent Order and agreed to be liable for carrying out the provisions of this Consent Order.

IV. EPA'S CONCLUSIONS OF LAW

4.1 The 70th Street Abandoned Containers/Trailers Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 The Respondent is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 Hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the 70th Street Abandoned Containers/Trailers Site and are currently present there.

4.4 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.5 Respondent A-Line is the former owner and operator of the Site, within the meaning set forth in Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

V. DETERMINATIONS

Based on EPA's Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information in the Administrative Record, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat or potential threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon EPA and its agents, the Respondent and its agents successors, and assigns. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or any of its responsibilities under this Consent Order.

6.2 In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Consent Order to the transferee in interest of the Site, prior to any agreement for transfer.

6.3 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained by Respondent to conduct any portion of the work to be performed by Respondent pursuant to this Consent Order, and shall condition all such contracts on compliance with the terms and conditions of this Consent Order.

6.4 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind the Respondent to this Consent Order.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Consent Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. WORK TO BE PERFORMED

8.1 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Respondent is ordered to and hereby agrees to commence and complete performance of the following removal action (the "Work") within the time periods and in the manner herein specified.

8.2 Respondent has retained and EPA has accepted ENSI of Pennsylvania (P.O. Box 832, Oaks, Pennsylvania 19456-0832) to conduct the response actions, including but not limited to the response actions identified in Paragraph 8.3 below (the "Work"), identified in this Consent Order. Prior to the initiation of Work, Respondent shall further notify EPA in writing regarding the identity and qualifications of the supervisory person or persons who will be primarily responsible for carrying out the terms of this Consent Order. All supervisory personnel, contractors, subcontractors and/or other persons performing cleanup activities at the Site shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The supervisory personnel, contractors, and subcontractors, including any replacements, are subject to acceptance by EPA. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes any such entity is not qualified to perform the Work. In the event of a disapproval by EPA, Respondent shall notify EPA within five (5) days of receipt of EPA disapproval of the supervisory personnel, contractor or subcontractor who will replace the one(s) disapproved by EPA.

8.3 Within ten (10) business days of the effective date of this Consent Order, Respondent shall submit a Work Plan ("WP") to the EPA for the Work to be implemented and shall include a schedule of operations for expeditious performance of the Work. The WP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.4. and 8.8 below. The following are the minimum specific Work items that are to be detailed in the WP:

- a. A Site Health and Safety Plan ("Safety Plan") to protect the health of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the work specified herein;
- b. A plan to provide site security;
- c. A plan to provide fire protection;
- d. A plan to identify, segregate and dispose of materials in the two Trailers at the Site, including measures that will consider reuse or recycling of appropriate materials, means to destroy contaminants and measures to prevent the spread of pollution to the maximum extent practicable.
- e. A plan to remove contamination from the two Trailers at the Site in accordance with the intent of item d, above;

- f. A plan to remove and properly dispose of, or treat contaminated water as necessary;
- g. Obtain a Hazardous Waste Generator Identification Number; and
- h. An expeditious schedule for implementation of the WP.

8.4 EPA will review the WP and notify the Respondent of EPA's approval or disapproval of the WP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the WP to EPA within five (5) business days of receipt of EPA disapproval. Approval, disapproval and/or modification by EPA of the subsequent WP submission shall be according to the provisions of Paragraph 8.8 below. Approval of the WP shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the Work outlined in paragraph 8.3 of this Order.

8.5 Within five (5) business days of receipt from EPA of written approval of the WP, the Respondent shall begin implementation of the Work in accordance with the WP and the schedule therein, and shall further conduct and complete the Work required in the WP in accordance with the approved WP, the schedule therein, and the terms hereof.

8.6 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the WP and every 7 days thereafter continuing until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 7 day period. The progress reports shall include, at a minimum: 1) a description of the Work completed and the actions that have been taken toward achieving compliance with this Consent Order; 2) a description of all data anticipated and activities scheduled for the next 7 days; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the Work, WP and schedule made in accordance with Section XVIII to this Consent Order, during the reporting period.

8.7 Documents, including work plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Order shall be sent by certified or express mail to the EPA Project Officer, designated pursuant to Paragraph 9.1.

8.8 All WPs, reports, plans, specifications, schedules and attachments required by this Consent Order are subject to EPA approval and shall be incorporated into this Consent Order upon approval by EPA. In the event that EPA disapproves any required

submission, EPA will specify the deficiencies in writing. Within five (5) business days of receipt of such EPA disapproval, Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA may submit its own modifications to the Respondent, in which case the Respondent is hereby required to implement such modifications. Alternatively, EPA may perform the response action and seek reimbursement of its costs from Respondent and/or take any other action authorized by law. Any non-compliance with such EPA-approved WPs, reports, plans, specifications, schedules, and attachments, submission of deficient revisions following EPA disapproval, or non-compliance with EPA required modifications in the case of subsequent disapprovals as specified in this paragraph shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA. In the event that EPA disapproves the revised submission(s), and EPA subsequently performs the response action, EPA retains the right to seek reimbursement of its costs, including treble damages, pursuant to Section 107(c) of CERCLA, 42 U.S.C. § 9607(c).

8.9 Respondent shall provide to EPA upon written request any and all information and documents in its possession custody or control resulting from and/or pertaining to Work performed by Respondent pursuant to this Consent Order including, but not limited to, analytical data (including raw data), Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, identities of any contractors and sub-contractors used, and information concerning the escrow account referenced in Paragraph 24.1 below. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

8.10 Within ten (10) calendar days of the completion of all of the Work required in the approved WP, Respondent shall submit a written report to EPA detailing the Work completed, and notifying EPA of such completion. This final report shall be certified by Respondent in accordance with the terms of paragraph 21.1(b). EPA may inspect the Work for adequacy of Respondent's performance of such Work. EPA will notify Respondent, in writing, of any Work deficiencies and the corrective Work actions required to correct these deficiencies at the Site. Such required corrective Work actions shall be consistent with the NCP and all applicable Federal laws or regulations. Respondent shall take the necessary corrective Work actions to address any Work deficiencies identified by EPA.

8.11 Respondent shall not remove any waste materials from the two Trailers at the Site, except in conformance with the terms of this Consent Order and all applicable Federal, State or local laws or regulations, as required by the NCP.

8.12 Respondent shall not commence any response actions or Work required by this Consent Order, except in conformance with the terms of this Consent Order.

IX. DESIGNATED PROJECT COORDINATORS

9.1 On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the Work required by this Consent Order. The Respondent shall notify EPA of its designated Project Coordinator no later than five (5) days after the effective date of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including WP reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators as set forth in paragraph 8.7 above.

9.2 The Project Coordinator for EPA is:

Terry Stilman, On-Scene Coordinator
U.S. Environmental Protection Agency
Removal Enforcement Section (3HW33)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-6686

9.3 The Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying EPA in writing at least five (5) days prior to the change.

9.4 EPA shall have the ability to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.

9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.

X. QUALITY ASSURANCE

10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved WP. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

11.1 As of the effective date of this Consent Order, Respondent shall provide access to EPA and its employees, agents, consultants, contractors, and other authorized and/or designated representatives for the purposes of conducting and/or overseeing any Work required by or relating to this Consent Order. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Consent Order.

11.2 To the extent that property wherein Work must be undertaken pursuant to the terms and conditions of this Consent Order is presently owned or controlled by parties other than Respondent, the Respondent shall use its best efforts to obtain Site access arrangements from the present owners within thirty (30) days of approval of the WP. Such agreements shall provide reasonable access for EPA, and the Respondent and its representatives, including for those activities outlined in 11.3 below. Acceptable access arrangements must involve access agreements fulfilling the requirements of paragraphs 11.1 and 11.3 of this Consent Order. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA, in writing, within five (5) days of all efforts to obtain access and the circumstances of the failure to obtain access. The Respondent shall also notify EPA of all efforts to obtain such agreements. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.

11.3 EPA and/or its authorized and designated representatives shall have the authority to enter and freely move about the location where the response action and/or Work is being performed at all reasonable times for the purpose of, inter alia: inspecting Work, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this Consent Order.

11.4 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA, and any other applicable statute or regulation.

XII. DISPUTE RESOLUTION

12.1 If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, including billings for oversight costs, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action.

12.2 EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.

12.3 In order to prevail in any dispute regarding oversight costs, Respondent must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day or portion thereof of failure of the Respondent to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as

stipulated penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. A copy of the transmittal letter shall be sent to the EPA Project Coordinator. A copy of the transmittal letter and check shall be sent to: EPA Region III Hearing Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

13.2 Stipulated penalties shall accrue in the amount of \$1,500 per calendar day per violation during the first seven days the violation continues, and \$5,000 per calendar day thereafter. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order, including but not limited to halting Respondent's performance of the response action.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

14.1

(a) The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) days after any such delay or anticipated delay and in writing no later than seven (7) days after any Respondent becomes aware of such delay or anticipated delay.

(b) Written justification that Respondent has met the burden set forth in paragraph 14.5 of this Section shall be provided to EPA no later than fourteen (14) days after Respondent becomes aware of such delay or anticipated delay and shall be certified in accordance with paragraph 21.1(b) of this Order. That justification shall describe fully the nature of the delay, including how it may affect the Work, WP and schedule, the reasons the delay is beyond the control of Respondent if appropriate, the actions that will be or have been taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

14.2 Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, that cannot be overcome by due diligence, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the WP does not justify delay in timely achievement of other items or components. Each such item must be separately addressed and delay substantiated, according to the provisions of paragraph 14.1 above.

14.3 Failure of the Respondent to comply with the notice requirements of paragraph 14.1 above shall constitute a waiver of the Respondent's right to invoke the benefits of this section with respect to that event.

14.4 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII of this Consent Order, "Dispute Resolution".

14.5 The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.

XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief, and the imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by the Respondent

and/or halt work being performed by Respondent that is not in compliance with the approved WP and reserves its right to request and require Respondent to correct and/or to re-perform any and all Work disapproved by EPA, and to request the Respondent to perform response actions in addition to those required by this Consent Order. In the event that the Respondent declines to perform such actions or additional actions, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or to seek any other appropriate relief including requiring Respondent to perform such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or to seek any other appropriate relief.

15.3 EPA reserves the right to bring an action against the Respondent for recovery of all oversight and other response costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

15.4 This Consent Order concerns certain removal response actions at the Site. The Work required by this Consent Order might not fully address all contamination at the Site. Subsequent response activities which may be deemed necessary by EPA are not addressed by this Consent Order.

15.5 Nothing in this Consent Order shall limit the authority of the On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order, the Respondent waives any claim to reimbursement it may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

XVII. OTHER APPLICABLE LAWS

17.1 All Work required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

18.2 This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the Work, WP and schedule approved pursuant to this Consent Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any WP, reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII "Delay in Performance and Stipulated Penalties," above. Determinations of non-compliance will be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding WPs, reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of their employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms,

corporations, subsidiaries, contractors, or consultants, in carrying out activities, including but not limited to Work pursuant to this Consent Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities, including but not limited to Work pursuant to this Consent Order.

XX. REIMBURSEMENT OF COSTS

20.1 After the completion of the Work required pursuant to this Consent Order, EPA shall submit to Respondent an accounting of all oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents, or contractors in connection with EPA's oversight of the Work to be done by Respondent and its contractors under the terms of this Consent Order.

20.2 Respondent shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substance Superfund. Interest at a rate in accordance with regulations of the U.S. Treasury shall begin to accrue on the unpaid balance from the day after the expiration of the thirty day period, notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be addressed as specified in Section XIII of this Consent Order.

XII. CERTIFICATION OF COMPLIANCE

21.1 Unless otherwise required by this Order, any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by either a responsible official of the Respondent or by the Project Coordinator for the Respondent.

(b) The final report, described in paragraph 8.10 of this Order, and any notification of delay described in paragraph 14.1(b) of this Order shall be certified by a responsible official of each Respondent. The term "responsible official" for a corporation means a responsible corporate officer: (a) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures ex-

ceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official for a partnership or sole proprietorship means a general partner or proprietor, respectively.

21.2 The certification of the Respondent required by paragraph 21.1 of this Consent Order shall be in the following form:

I certify that the information contained in
or accompanying this (specify type of submission)
is true, accurate and complete.

Signature: _____
Name (print): _____
Title: _____

XXII. CALCULATION OF TIME

22.1 Any reference to "days" in this Consent Order shall mean calendar days, unless otherwise specifically provided herein. Any reference to "business days" shall mean every day of the week except Saturdays, Sundays and federal holidays.

XXIII. TERMINATION AND SATISFACTION

23.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been satisfactorily completed.

XXIV. FINANCIAL ASSURANCE; OTHER RESPONSIBLE PARTIES

24.1 Respondent has agreed to deposit in an interest-bearing escrow in a bank duly chartered in the Commonwealth of Pennsylvania within seven days of the effective date of this Order \$60,000 to assure payment for (1) the preparation of the WP, (2) the investigation of the Trailers, including a determination of the contents of the materials in the containers and drums, (3) an analysis of the disposal options, and (4) the disposal of all hazardous substances in the two Trailers (collectively the "Work").

24.2 It is EPA's current intention to continue to investigate potentially responsible parties at the Site, including those already identified.

FOR THE RESPONDENT:

BY: [Signature]
A-Line Freight, Ltd.
Title: Owner

DATE: 7-26-91

FOR THE EPA:

BY: [Signature]
Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection
Agency

DATE: AUG 08 1991